

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
LARAMIE COUNTY ASSESSOR FROM)
A DECISION OF THE LARAMIE COUNTY) Docket No. **2012-72**
BOARD OF EQUALIZATION - 2012)
PROPERTY VALUATION (LCSD # 1))

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

APPEARANCES

Mark T. Voss, Laramie County Attorney, appeared on behalf of Brenda Arnold¹, Laramie County Assessor (Assessor). Oral Argument by Mr. Voss.

Richard Bush, Hickey & Evans LLP, appeared on behalf of Laramie County School District Number 1 (School District). Oral Argument by Mr. Bush.

DIGEST

The Assessor appeals the decision of the Laramie County Board of Equalization (County Board) reversing the Assessor's denial of a property tax exemption for two vacant properties owned by the School District.

The State Board of Equalization (State Board), comprised of Chairman Steven D. Olmstead, Vice Chairman Paul Thomas Glause, and Board Member E. Jayne Mockler², considered the

¹ Brenda Arnold resigned as Laramie County Assessor in June 2013, and was appointed the Administrator of the Property Tax Division of the Wyoming Department of Revenue in July 2013. Kenneth Guille was appointed to fill the position of Laramie County Assessor in July 2013.

² E. Jayne Mockler was appointed to the Board effective March 20, 2013, and participated in this decision by reviewing the record, the materials filed with the Board and listening to the recorded oral arguments.

County Board record, the decision of the County Board, the Assessor's Notice of Appeal, the Assessor's brief, the School District's brief, and the parties' oral arguments.

The State Board evaluates the Assessor's appeal of the County Board decision against our standard of review, which is whether the County Board decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3 § 9.*

The State Board affirms the decision of the Laramie County Board of Equalization.

ISSUE

The Assessor and the School District essentially identified one issue:

Whether the County Board's Decision and Order finding these Properties primarily used for a governmental purpose is supported by substantial evidence, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law?

[*Assessor's Brief*, p. 4; *Brief of Laramie County School District Number 1*, p. 3].

The ultimate issue before the State Board is best framed as:

Whether undeveloped or vacant land owned by a school district is exempt as being "used primarily for a governmental purpose?"

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on July 11, 2012, which combined the two property exemption appeals of the School District. Each party presented testimony³ and exhibits. [County Board Record, pp. 90-226]. The County Board entered its Decision and Order in both cases on August 6, 2012, reversing the Assessor's denial of property tax exemptions for

³ The record on appeal contained a transcript and a "corrected transcript." There was no indication in the record as to why a corrected transcript was necessary or what was corrected. The original transcript was signed by the reporter (County Board Record, p. 226), whereas the "corrected transcript" was not signed (County Board Record, p. 385). The State Board, therefore, will refer to the original transcript.

the two vacant parcels of land owned by the School District. [County Board Record, pp. 443-455].

JURISDICTION

The State Board is required to “hear appeals from county boards of equalization.” *Wyo. Stat. Ann. § 39-11-102.1(c)*. On August 15, 2012, the Assessor filed a timely notice of appeal of the County Board decision with the State Board. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*. The Assessor filed a Brief of Petitioner on November 9, 2012, and the School District filed a Brief of Respondent on December 10, 2012. The Assessor did not file a reply brief. The State Board heard the parties oral arguments on January 30, 2013.

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). *Wyo. Stat. Ann. § 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 with Rules, Wyoming State Board of Equalization, Chapter 3*.

The State Board standards for review of a county board decision are, by Rule, nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply in reviewing an agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims a county board has acted “[c]ontrary to constitutional right, power, privilege or immunity.” *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board’s review is limited to a determination of whether a county board’s action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

(c) Without observance of procedure required by law; or

(d) Unsupported by substantial evidence.

Rules, Wyoming State Board of Equalization, Chapter 3 § 9.

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent interpreting Wyoming Statutes section 16-3-114(c) for guidance. For example, we must apply this substantial evidence standard:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo.2001); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo.2000). If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency." *Id.*

Chevron U.S.A., Inc. v. Department of Revenue, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

We also apply this standard when reviewing conclusions of law:

Questions of law are reviewed *de novo*, and "[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency's determination, and we will correct any error made by the agency in either interpreting or applying the law.'" *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo.2011) (quoting *State ex rel. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo.2001)).

Maverick Motorsports Group, LLC v. Department of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011).

We review the findings of ultimate fact of a county board *de novo*:

When an agency's determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an "ultimate fact," we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency's ultimate factual finding if there is an error in either stating or applying the law.

Basin Elec. Power Co-op., Inc. v. Dep't of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998)(citations omitted), *quoted in Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

We also apply this "arbitrary and capricious" standard:

Even if sufficient evidence is found to support the agency's decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a "safety net" to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm'n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo.2005). "Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process." *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers' Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo.2004)).

State ex rel. Wyoming Workers' Safety and Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

FACTS PRESENTED TO THE COUNTY BOARD

1. The School District owns 9.41 acres of vacant land described as "All American Subdivision, 3rd Filing: Lot 8, Block 9, in Cheyenne, Wyoming"; and 40.84 acres of vacant land described as "North Cheyenne Community Park: Lot 1, Block 1, in Cheyenne, Wyoming" (collectively "Properties"). The Properties are the subject of this appeal. [County Board Record, pp. 1-4, 135-136, 445].

2. In July 2011, the School District filed a request for tax exemption on the All American Subdivision land with the Assessor. The North Cheyenne Community Park land was exempt in prior years. In September 2011, the Assessor made an inquiry with the School District as to the status and use of its Properties. The Assessor and School District representatives

discussed the Properties' status and use before the assessment date of January 1, 2012. [County Board Record, pp. 56-57, 68-70, 111-112, 118, 164, 207, 228, 252-253].

3. On January 10, 2012, the Assessor sent the School District two letters, one for each of the Properties, stating she determined the Properties were not being used for a governmental purpose because the properties were vacant. [County Board Record, pp. 56-57, 69-70, 111-112, 252-253].

4. The Assessor determined a fair market value for the Properties as of January 1, 2012. [County Board Record, pp. 58-59, 69-70, 111-112, 164, 252-253].

5. The Assessor mailed assessment notices for the Properties for the 2012 tax year on March 21, 2012, to the School District's legal counsel. The fair market value set by the Assessor in the Assessment Notices was \$111,105 for the All American Subdivision land and \$1,306,881 for the North Cheyenne Community Park land. [County Board Record, pp. 58-59, 124].

6. The Properties' valuations determined by the Assessor were not at issue before the County Board; rather the Properties taxable status was the issue. The two Properties were the only vacant land parcels owned by the School District. Prior to 2012, the School District had not been assessed property tax on the North Cheyenne Community Park land. The School District acquired the All American Subdivision land in March 2011. The School District expressly requested an exemption for the Properties. [County Board Record, pp. 70, 68-74, 124, 155, 250, 445;].

7. The School District filed appeals for each of the Assessor's assessment notices on April 20, 2012. [County Board Record, pp. 1-4, 60-67].

8. The County Board held a hearing on the School District appeals on July 11, 2012. [County Board Record, pp. 91, 445].

9. The Assessor reviewed all government owned properties in Laramie County in 2011, regarding tax exemption status and the governmental use of the property. The Assessor was aware of the Wyoming constitutional and statutory exemption for government owned property. The Assessor made a physical review of the Properties and determined the Properties did not qualify for a tax exemption because the Properties were vacant or "idle," with no apparent use. She determined the Properties were not being used primarily for a governmental purpose. [County Board Record, pp. 110-112, 130, 153-154].

10. After receiving a written request for a governmental exemption from the School District, the Assessor denied the request due to her determination the Properties were not being used for a governmental purpose because there was no construction on the Properties. The Assessor based her decision solely on her reading and interpretation of the Department's Rule in Chapter 14, Section 18. [County Board Record, pp. 68, 124, 147-148, 153-154].

11. The Assessor asserted it would have been necessary on January 1, 2012, that some construction or "[a] shovel in the ground would be sufficient" to have qualified the School District Properties for the exemption. The Assessor did not believe planning and design of school buildings were part of construction, or the governmental use of the Properties. [County Board Record, pp. 124, 147-149, 152-153].

12. The Assessor agreed the School District could have had some other governmental use besides constructing a building to qualify for an exemption. However, she reasserted her decision to deny the exemption was because the Properties were vacant. [County Board Record, pp. 123-124, 149-150, 154].

13. Forty-four mills of the total seventy-one mills levied in Laramie County for taxes on the Properties would be returned to the School District or for other state education functions. [County Board Record, pp. 158-161, 230].

14. David Bartlett, Assistant Superintendent for Support Operation, testified on behalf of the School District. For the five years prior to the County Board hearing, Mr. Bartlett oversaw the construction of any project valued over \$10,000, and all capital construction projects, such as the construction or replacement of schools on the 500 acres of land owned by the School District. [County Board Record, pp. 166-167].

15. The School District was required to follow state statutes and the Wyoming Department of Education rules and procedures to obtain funding made available by the Wyoming legislature and distributed through the Wyoming School Facilities Commission (SFC) as part of Wyoming's school finance reform. [County Board Record, pp. 168-174, 259-271].

16. Each year the School District was required to submit a "condition and capacity list" to the SFC, in order for the commission to determine a "needs list" for all school districts in the state. When a project was determined by the SFC to be necessary, the School District was provided planning funding to proceed with the project. Mr. Bartlett explained the "needs list" as he identified Exhibits 12, 13, and 14. [County Board Record, pp. 75-89, 168-174, 259-271].

17. It was necessary, as a matter of preparedness for the School District, but also as an economic necessity, to have an inventory of available land for school facility sites in order to timely proceed with planning and undertaking the construction of new or replacement School District facilities. The necessity for school facility land inventory for construction was driven by the availability of funding from the state's SFC. The process to obtain funding and to start the planning and construction was usually about a year or more, depending on the schools (grade, middle or high school) included in the facility. [County Board Record, pp. 168-174, 259-271].

18. The Properties were acquired at different times and held in the School District's land inventory for an appropriate time to construct a school on each of the sites. The North Cheyenne Community Park land was acquired in February 1979; and the All American Subdivision land was acquired in March 2011. The building construction decision process was a combination of "needs and assessment" based upon growth in the community and the conditions of the existing School District facilities. Before proceeding with "needs and assessment" building construction, funding must be available from the state and the land necessary to start a building project must be acquired. [County Board Record pp.70-73, 168-174, 259-271].

19. The School District was required to follow the requirements and mandates set in the Wyoming statutes and the Department of Education and SFC rules and regulations for school facility financing and construction. The School District also must comply with the statutes, rules and regulations when it wanted to dispose of school facility property no longer needed. [County Board Record, pp. 168-174, 212-213, 259-271].

20. The Properties, which were vacant, had not been used for any other purpose than as school facility sites under planning by the School District. The School District had plans for the Properties, but were not at the stage with the SFC for construction to begin. [County Board Record, pp. 181-182, 184-194, 201-204 259-275].

21. The Properties could have been used for some other non-building site use, but Mr. Bartlett expressed doubt the two Properties could be used for storage of School District property or for parking of the School District vehicles. He expressed doubt the Properties could be used as a School District's driver's education location. He said the School District tried to be "neighbor friendly." [County Board Record, pp. 193-194, 201-204].

22. Any portion of the Conclusions of Law: Principles of Law or the Conclusions of Law: Application of Principles of Law set forth below which includes a finding of fact may also be considered a Finding of Fact and, therefore, is incorporated herein by reference.

CONCLUSIONS OF LAW

23. The State Board is specifically authorized to hear an assessor's appeal of an adverse county board decision. *Wyo. Stat. Ann. § 39-13-109(b)(ii)*. The Assessor filed a timely appeal of the County Board's August 6, 2012, decision with the State Board effective August 15, 2012. *Rules, Wyoming State Board of Equalization, Chapter 3 § 2*.

Applicable Law

24. The Wyoming Constitution article 15, § 11(b), provides in pertinent part: "All taxable property shall be valued at its full value as defined by the legislature except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions."

25. The Wyoming Constitution article 15, § 11(d), requires: "All taxation shall be equal and uniform within each class of property. The legislature shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal."

26. The Wyoming Constitution also provides for property tax exemptions:

The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, when used primarily for a governmental purpose, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, church schools and public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.

Wyo. Const. art. 15, § 12 (emphasis added).

27. Wyoming Statutes provide in relevant part:

(a) Taxable event. The following shall apply:

(i) Property subject to taxation. All property within Wyoming is subject to taxation as provided by this act except as prohibited by the United States or Wyoming constitutions or expressly exempted by W.S. 39-11-105.

Wyo. Stat. Ann. § 39-11-103(a)(i).

28. The exemption at issue in the case, the exemption for property of a Wyoming school district, is further addressed by Wyoming Statutes:

(a) The following property is exempt from property taxation:

* * *

(iv) Property of a Wyoming school district owned and used primarily for a governmental purpose excluding teacherages;

Wyo. Stat. Ann. § 39-11-105(a)(iv).

29. Wyoming Statutes further provide:

(b) Basis of tax. The following shall apply:

* * *

(ii) All taxable property shall be annually valued at its fair market value. Except as otherwise provided by law for specific property, the department shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards;

* * *

(vii) The county assessor shall enter in books furnished for that purpose, from the tax schedule, the enumeration and fair market value of all taxable property assessed by him or his deputies. The county assessor shall enter the names of persons against whom property is assessed in the county assessment roll in alphabetical order. On or before the fourth Monday in April, or as soon thereafter as is practicable, the county assessor shall mail all assessment schedules to taxpayers at their last known address, and return the county assessment roll enumerating the property and value assessed by him or his deputies to the board of county commissioners together with a list stating the assessed value of taxable property within each school district, municipality or special district in the county.

Wyo. Stat. Ann. § 39-13-103(b)(ii), (vii).

30. The statutory valuation date is January 1 of each year, and all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date.

Wyo. Stat. Ann. § 39-13-103(b)(i).

31. The Department is required to confer with, advise and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. *Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix).*

32. A county assessor has a corresponding duty to annually value property within the assessor's county, and in doing so to "[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property." *Wyo. Stat. Ann. § 18-3-204(a)(ix)*.

33. The State Board is required to "[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department." *Wyo. Stat. Ann. § 39-11-102.1(c)(iv)*.

34. The Wyoming Supreme Court has previously summarized a number of useful precepts concerning statutory interpretation:

Statutes must be construed so that no portion is rendered meaningless. Interpretation should not produce an absurd result. We are guided by the full text of the statute, paying attention to its internal structure and the functional relation between the parts and the whole. Each word of a statute is to be afforded meaning, with none rendered superfluous. Further, the meaning afforded to a word should be that word's standard popular meaning unless another meaning is clearly intended. If the meaning of a word is unclear, it should be afforded the meaning that best accomplishes the statute's purpose. We presume that the legislature acts intentionally when it uses particular language in one statute, but not in another. If two sections of legislation appear to conflict, they should be given a reading that gives them both effect.

Rodriguez v. Casey, 2002 WY 111, ¶ 10, 50 P.3d 323, 326-327 (Wyo. 2002) (citations omitted); *quoted in Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005).

35. It is an elementary rule of statutory interpretation that all portions of an act must be read *in pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous. *Chevron U. S. A., Inc. v. Department of Revenue*, 2007 WY 79, ¶ 15, 158 P.3d 131, 136 (Wyo. 2007). Also applicable is the oft-repeated rule it must be presumed the Legislature did not intend futile things. *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo. 1985). *See also TPJ v. State*, 2003 WY 49, ¶ 11, 66 P.3d 710, 713 (Wyo. 2003).

36. “The legislature is presumed to act in a thoughtful and rational manner with full knowledge of existing law, and statutes are therefore ‘to be construed in harmony with existing law and as part of an overall and uniform system of jurisprudence.’” *Redco Const. v. Profile Props., LLC*, 2012 WY 24, ¶ 37, 271 P.3d 408, 418 (Wyo. 2012). (citations omitted). *See also Estate of Dahlke ex rel. Jubie v. Dahlke*, 2014 WY 29, ¶ 37, 319 P.3d 116, 125 (Wyo. 2014).

37. “A basic tenet of statutory construction is that the omission of words from a statute is considered to be an intentional act by the legislature, and this [Board] will not read words into a statute when the legislature has chosen not to include them.” *Merrill v. Jansma*, 2004 WY 26, ¶ 29, 86 P.3d 270, 285 (Wyo. 2004). “Words may not be inserted in a statutory provision under the guise of interpretation.” *In re Adoption of Voss*, 550 P.2d 481, 485 (Wyo. 1976); *accord Spreeman v. State*, 2012 WY 88, ¶ 13, 278 P.3d 1159, 1163 (Wyo. 2012); *Adelizzi v. Stratton*, 2010 WY 148, ¶ 11, 243 P.3d 563, 566 (Wyo. 2010).

38. In construing statutes, the following standard applies:

The paramount consideration is to determine the legislature’s intent, which must be ascertained initially and primarily from the words used in the statute. We look first to the plain and ordinary meaning of the words to determine if the statute is ambiguous. A statute is clear and unambiguous if its wording is such that reasonable persons are able to agree on its meaning with consistency and predictability. Conversely, a statute is ambiguous if it is found to be vague or uncertain and subject to varying interpretations. If we determine that a statute is clear and unambiguous, we give effect to the plain language of the statute.

RME Petroleum Co. v. Wyo. Dept of Revenue, 2007 WY 16, ¶ 25, 150 P.3d 673, 683 (Wyo. 2007) (citations omitted); *quoted in Kennedy Oil v. Dept. of Revenue*, 2008 WY 154, ¶ 10, 205 P.3d 999, 1003 (Wyo. 2008), *see Morris v. CMS Oil and Gas Co.*, 2010 WY 37, ¶ 26, 227 P.3d 325, 333 (Wyo. 2010).

39. The rules of statutory interpretation apply to the interpretation of administrative rules and regulations. *State ex Rel. Dept. of Revenue v. Buggy Bath Unlimited, Inc.*, 2001 WY 27, ¶ 6, 18 P.3d 1182, 1185 (Wyo. 2001). Rules promulgated in excess of an agency’s statutory authority are null and void. *Id. at 1186, 1188.*

40. The Wyoming Supreme Court has set the standards that apply when analyzing the exemption of government owned property:

Although under Title 39, taxation of property is generally the rule, the exemptions provided for by § 39-11-105(a)(v) require that we apply the rule that where the established policy of the state is to exempt publicly owned property, the burden is placed on the taxing authority to establish taxability. *City of Cheyenne v. Bd. of County Comm'rs of the County of Laramie*, 484 P.2d 706, 708-709 (Wyo.1971). The mere ownership of property by a town does not exempt the property; it must also be used primarily for governmental purposes. *Id.* at 709. When a town uses the property in a proprietary manner, the property is not exempt from taxation. *Town of Pine Bluffs v. State Board of Equalization*, 79 Wyo. 262, 288, 333 P.2d 700, 710 (Wyo.1958). The taxable status of property owned by a governmental entity must be determined as a question of fact by the use made of the property. *City of Cheyenne v. Sims*, 521 P.2d 1347, 1349 (Wyo.1974).

We have recognized that the term "used primarily for a governmental purpose" is difficult to define but have found that it applied to buildings leased to profit-making corporations although located upon a municipally owned and operated airport. *City of Cheyenne v. Bd. of Cty. Comm'rs of Laramie Cty.*, 484 P.2d at 709. There, we said that the mere fact that the city accomplishes such use through a lessee or receives rent in return for such use is not controlling. *Id.* We later decided that "[w]here the primary and principal use to which property is put is public, the mere fact that income is incidentally derived from it does not affect its character as property devoted to a public use, so as to prevent its being exempt from taxation." *State Bd. of Equalization v. City of Lander*, 882 P.2d 844, 850 (Wyo.1994).

In Re Deromedi, Hot Springs Assessor, 2002 WY 69, ¶¶ 10-11, 45 P.3d 1150, 1153-1154 (Wyo. 2002) (footnote omitted); see *In Re Town of Thermopolis*, 2002 WY 70, ¶¶ 13-14, 45 P.3d 1155, 1160 (Wyo. 2002).

41. The Department has adopted several rules addressing the exemption of property, noting "[a]ll questions of exemption cannot be addressed and answered by rule. These standards are to serve, together with applicable law and Departmental guidelines, as a ready reference to commonly encountered problems." *Rules, Wyoming Department of Revenue, Ch. 14 § 1(b)*.

42. Chapter 14 of the Department's Rules provides assessors with guidance in determining whether property owned by a school district is exempt from property taxation.

Section 2. Considerations.

(a.) For county assessed property, county assessors are responsible for making the initial determination of exemption.

(i) For publicly owned property the assessor begins with the legal presumption the property is exempt.

* * *

Section 3. Burden of Proof.

* * *

(b.) For publicly owned property, the burden is on the taxing authority to establish taxability.

* * *

Section 4. Publicly owned property - W.S. 39-11-105(a)(i)-(vi).

(a.) Publicly owned property is not, per se, exempt from taxation. The property is exempt only "when used primarily for a governmental purpose."

(b.) The phrase "governmental purpose" cannot be precisely defined. The following considerations should be evaluated:

(i) If a service or function is obligatory (one the governmental entity must perform as a legal duty imposed by statute), the function is governmental and the associated property is exempt.

(ii) If a service is rendered gratuitously, supported by taxes, and for the public welfare or enjoyment generally, the property associated with providing such service is exempt.

Rules, Wyoming Department of Revenue, Chapter 4 §§ 2(a.)(i), 3(b.) 14(a.) & 14(b.)(i)-(vi) (Effective 05/21/2008).

43. Chapter 14 of the Department Rules also provides assessors with guidance in determining use for unused or vacant property:

Section 18. Undeveloped, unconstructed or unused property.

(a) For exemptions requiring a specific use to qualify, neither ownership of the property nor stated objectives of the entity's organization is sufficient. To justify an exemption, actual and immediate use of the property consistent with the applicable exemption standard is required. The mere holding of the property by an entity for future or prospective use is not sufficient.

(b) An exemption may be granted once construction or use commences consistent with the exempt purpose.

Rules, Wyoming Department of Revenue, Chapter 14 § 18.

44. Administrative rules have the force and effect of law. *Wyo. Dept. of Revenue v. Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

45. The Wyoming Supreme Court expressed “administrative agencies are bound to comply with their enabling statutes. An administrative rule or regulation which is not expressly or impliedly authorized by statute is without force or effect if it adds to, changes, modifies, or conflicts with an existing statute. Conversely, a rule or regulation which is expressly or impliedly authorized by the enabling statute will be given force and effect.” *Billings v. Wyo. Bd. of Outfitters and Guides*, 2001 WY 81 ¶ 24, 30 P.3d 557, 568-569 (Wyo. 2001) (citations omitted); *quoted in Diamond B Services, Inc. v. Rohde*, 2005 WY 130, ¶ 60, 120 P.3d 1031, 1048 (Wyo. 2005); *See BP America Production v. Dept. of Revenue*, 2006 WY 27, ¶ 28, 130 P.3d 438, 466-467 (Wyo. 2006).

46. “Legislative intent, manifested in the plain language of the statutes, is the controlling consideration” in the State Board’s interpretation of them. *In re Osenbaugh* 10 P.3d 544, 550 (Wyo. 2000). This intent is the “vital part, and the essence of the law.” *Rasmussen v. Baker*, 7 Wyo. 117, 128, 50 P. 819, 821 (1897). In keeping with the legislature’s intent, the State Board endeavors to give statutes a “reasonable, practical construction.” *Story v. State*, 755 P.2d 228, 231 (Wyo. 1988) (citation omitted); *KP v. State*, 2004 WY 165, ¶ 22, 102 P.3d 217, 224 (Wyo. 2004). We do not construe statutes “in a manner producing absurd results.” *State v. Sodergren*, 686 P.2d 521, 527 (Wyo. 1984) *Story v. State, supra*, 755 P.2d at 231. Put another way, “[w]hen a statute is as clear as a glass slipper and fits without strain, courts should not approve an interpretation that requires a shoehorn.” *Demko v. United States*, 216 F.3d 1049, 1053 (Fed. Cir. 2000).

47. The Wyoming Rules of Evidence address presumptions in civil actions and proceedings:

(a) *Effect*. In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes upon the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.

(b) *Inconsistent presumptions*. If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.

Rule 301, W.R.E.

48. “‘School buildings and facilities’ mean the physical structures and the land upon which the structures are situated, which are primarily used in connection with or for the purpose of providing the educational programs offered by a school district in compliance with law, including both student-relate and nonstudent-related buildings and facilities.” *Wyo. Stat. Ann. § 21-15-111(a)(vi)*.

49. The School Facilities Commission has the power and duty to:

(ii) Adopt policies, guidelines and standards for the comprehensive assessment of school buildings and facilities required under W.S. 21-15-115;

(iii) Adopt policies, guidelines and standards for school district facility plans required under W.S. 21-15-116 and review and approve each plan as required under this act;

* * *

(vii) Develop policies and criteria for use in determining renovation, replacement or discontinuation of inadequate buildings and facilities based upon statewide adequacy standards and other requirements necessary to ensure adequate, efficient and cost effective school buildings and facilities;

* * *

(xii) Develop criteria and procedures for the site analysis of remedies responding to identified building and facility needs by building and facility replacement. Site analysis shall include a comprehensive review and evaluation of site soil conditions, traffic patterns, utilities and site topography;

* * *

(xv) With prior consultation with the select committee on school facilities, promulgate necessary rules and regulations to administer and implement this act.

Wyo. Stat. Ann. § 21-15-114(a).

50. Wyoming Statutes section 21-15-115 states, in relevant part:

(a) The commission shall by rule and regulation establish and maintain uniform statewide standards for the adequacy of school buildings and facilities necessary for providing educational programs prescribed by law for the public schools. ... The uniform standards shall at a minimum include:

* * *

(ii) Building site requirements.

* * *

(b) The (school facilities) department shall maintain the comprehensive assessment of adequacy of existing school building and facilities and future space requirements within the state. Maintenance of the assessment shall include district reporting of new construction and major building and facility repair and replacement activities in accordance with guidelines prescribed by rule and regulation of the commission, the results of department on-site visitations and inspections of buildings and facilities and needs assessment data and verification of building and facility ratings through periodic review. The assessment shall be designed and maintained to provide timely and uniform statewide data on all the following:

* * *

(v) Site requirements of school buildings and facilities.

51. Wyoming Statutes section 21-15-116 states, in relevant part:

(a) In accordance with rules and regulations of the commission, long range comprehensive school building and facility plans for each school district shall be developed by the department in coordination with the applicable district, which addresses district wide building and facility needs, including construction, renovation and major building and facility repair and replacement expenditures and any local enhancements to buildings and facilities beyond statewide standards. The facility plan shall include a response to each building and facility need identified on a building-by-building, space-by-space basis. In addition, the district facility plans shall include:

* * *

(ii) A description of proposed new school or additions and remediations to existing schools necessary to meet building adequacy standards, including:

* * *

(B) The year in which it is necessary to commence operations of the proposed new school or school addition;

(C) The timeline for the planning and construction of the new school or school addition or remediation.

(iii) Projections for new land required for new school including land purchase, acquisition and site analysis.

* * *

(v) A plan for addressing district major building and facility repair or replacement needs as required under W.S. 21-15-109(e).

52. Wyoming Statutes section 21-15-118 states, in relevant part:

(a) Upon determination by the commission following review under W.S. 21-15-117, and appropriation by the legislature in accordance with W.S. 21-15-119, the (school facilities) department shall proceed with projects as follows:

* * *

(ii) If a capital outlay remedy:

(A) With the assistance of the involved school district, develop and approve the necessary schematic design documents;

(B) Conduct a value engineering analysis of the project;

(C) Perform an energy efficiency assessment of the project;

(D) Conduct a safety and security assessment of the project;

(E) Enforce the requirements under subparagraphs (a)(ii)(B) through (D) of this subsection and may waive any of these requirements if determined not necessary or if provided within any one (1) of the other requirements specified under this paragraph.

53. The Wyoming Statutes require a school district board of trustees to fix the site of each school building and facility considering the needs of the people of each portion of the district. *Wyo. Stat. Ann. § 21-3-110(a)(x)*.

54. Wyoming Statutes state:

(a) The board of trustees in each school within the state may:

* * *

(ii) Acquire, hold, convey, lease, rent, and manage property, real and personal, for the benefit of the school district in the name by which the district is designated, either alone or jointly with another public or private agency, institution, person, or corporation. This includes capital leasing under W.S. 21-15-112.

Wyo. Stat. Ann. § 21-3-111(a)(ii).

55. The Wyoming Supreme Court has reviewed the legislation requiring the School Facilities Commission (SFC) review of school district construction. The Court said:

The legislature has enacted a comprehensive constitutional statutory plan for school capital construction.

* * *

The legislature's constitutional statutory scheme directed the SFC to adopt rules and regulations to accomplish statutory directives for major and minor maintenance as well as building remodels, additions and construction.

Campbell County School Dist. v. State, 2008 WY 2, ¶¶ 107-108, 181 P.3d 43, 76-77 (Wyo. 2008).

56. Wyoming Statutes section 21-15-123(f)(viii) states, in part:

(viii) Review of any proposed sale of existing land owned by a district, which land is within the scope of the district's facility plan, and determine the impact of the land disposition upon that plan. The department shall report the review to the commission. The district shall have the final authority over the sale of existing land owned by the district, except that the commission, after receiving a report of the review by the department, may disapprove any plans related to a sale submitted pursuant to this paragraph if the commission determines that the plans do not protect the financial interests of the state or are not otherwise in the public interest. If the commission determines land disposition adversely impacts the cost-effectiveness of the district's facility plan, the revenues resulting from land disposition shall be considered by the commission in any future building or facility remedy for that district and, notwithstanding paragraph (vi) of this subsection, the commission may direct the department of education to consider or count those revenues under either W.S. 21-13-310 (a)(xiv) or (xv).

Discussion

57. During 2011, the Laramie County Assessor conducted a review of all government owned property, including properties owned by the School District to determine whether the properties were being utilized appropriately or whether the properties should be assessed for tax purposes. The Assessor's review of the government owned properties in the county for valuation purposes was appropriate. It was necessary to make such a review to determine whether each of the government owned properties qualified for an exemption, or if it should be taxed. *Supra* ¶¶ 1-5, 9-12, 24-26, 29, 32.

58. The Wyoming Constitution exempts certain specified property from taxation, and broadly authorizes the legislature to provide for the exemption of other property. *Wyo. Const., art. 15, § 12; supra* ¶ 26. The legislature has used that authority to adopt thirty-seven subsections of exemptions, one of which is at issue in this case. *Wyo. Stat. Ann. § 39-11-105(a)*. *Supra* ¶¶ 24-28.

59. Both the Wyoming constitutional and statutory provisions require a school district's use of its property to be "primarily" for a "governmental" purpose. The Wyoming Supreme court has defined "primarily" as follows:

The term "primarily" has an ordinary and obvious meaning in the law. "Primarily" means "of first importance" or "principally." *Malat v. Riddell*, 383 U.S. 569, 572, 86 S.Ct 1030, 1032, 16 L.Ed.2d 102 (1966). *Accord Hibernian Soc. v. Thomas*, 282 S.C. 465, 319 S.E.2d 339, 342-343 (1984) (applying this definition to ad valorem tax exemption statute). The term "primarily" may also be synonymous with "essentially" or "fundamentally" in some circumstances. *Board of Governors v. Agnew*, 329 U.S. 441, 446, 67 S.Ct. 411, 414, 91 L.Ed. 408 (1947); *Brennan v. Harrison County, Mississippi*, 505 F.2d 901, 903 (5th Cir. 1975).

The language used in the relevant portions of Wyo. Const. art. 15 § 12 and Wyoming Statute section 39-11-105(a)(iv) is unambiguous. The intent, to exempt from taxation property of a governmental entity "when used primarily for a governmental purpose," is stated in such a manner that reasonable persons are able to agree on its meaning with consistency and predictability. *Allied Signal, Inc. v. Wyoming State Bd. of Equalization*, 813 P.2d 214, 220 (Wyo.1991). The purpose of such an exemption is to prevent an escalating spiral of unnecessary taxation and administrative costs with no benefit to the public. 16 Eugene McQuillin, *The Law of Municipal Corporations*, § 44.57 at 206 (3rd ed 1994).

If one governmental entity chooses to tax the property of another governmental entity, the governmental entity forced to pay taxes may have to levy and collect new taxes to meet the demands of the tax. [2 Thomas M. Cooley, *The Law of Taxation*, § 621 at 1313 (4th ed. 1924)]. The effect of such a tax spiral is that the public would be taxing itself to raise money to pay itself. *Id.* The only benefit of such a system is that it satisfies a bureaucratic desire to exactitude by taking money out of one pocket and putting it in another. *Id.* 1317.

State Board of Equalization v. City of Lander, 882 P.2d 844, 850 (Wyo. 1994).

60. The Wyoming Supreme Court has set the standards that apply when analyzing the exemption of a government owned property. These standards apply in this case. The established policy of the state is to exempt publicly owned property, and the burden is placed on the taxing authority to establish taxability. Although the mere ownership of property by

a governmental entity does not exempt the property; it must also be used primarily for governmental purposes. The taxable status of property owned by a governmental entity, such as the School District, must be determined as a question of fact by the use made of the property. The individual circumstances must determine whether the use is “primarily” for a “governmental purpose.” *Supra* ¶ 40.

61. The Department of Revenue adopted Rules to “provide a reference to accepted definitions, procedures and criteria for the exemption from assessment and taxation of real and personal property,” and to serve “together with applicable law and Departmental guidelines as a ready reference to commonly encountered problems.” The Department also stated “[a]ll questions of exemptions cannot be addressed and answered by rule.” *Rules, Wyoming Department of Revenue, Chapter 14 § 1 (a), (b)*. The Rules are binding on assessors, and have the status of law. *Supra* ¶¶ 41-45.

62. The Department’s Rules do not provide significant guidance concerning the School District’s exemption. The Department’s Rules establish that the assessor must make the initial determination whether the property is exempt with the legal presumption for publicly owned property that it is exempt. This “guidance” applies in this case. *Supra* ¶ 42.

63. In the Wyoming Statutes, exemptions are typically framed in terms of ownership, *e.g.*, *Wyo. Stat. Ann. § 39-11-105(a)(xviii), (xxii), (xxxvi), (xxxvii)*; use of property, *e.g.*, *Wyo. Stat. Ann. § 39-11-105(a)(vii), (xx)*; type of property, *e.g.*, *Wyo. Stat. Ann. § 39-11-105(a)(x), (xii), (xv)*; or some combination of ownership, use, and type, *e.g.*, *Wyo. Stat. Ann. § 39-11-105(a)(iii), (iv), (v), (vi) (xiv), (xxvii), (xxxv)*.

64. In determining the exemption issue, the Board must consider whether the Department’s standard related to undeveloped property applies. The Department’s Rules regarding undeveloped, unconstructed or unused property requires the property to have an actual and immediate use consistent with the applicable exemption standard. An exemption may be granted once use commences consistent with the exemption purpose. *Rules, Wyoming Department of Revenue, Chapter 14 § 18(a)(b.); supra* ¶ 43.

65. The Board follows authorities applying similar standards by looking first to the use of the property: “[e]ligibility for exemption is determined by examining the use to which the property is put, not the character of the owner.” *Wes Brandt Foundation, Inc. v. Carper*, 652 P.2d 654, 567 (Colo. 1982). The exemption for school districts requires the property be used primarily for a governmental purpose in addition to being owned by a Wyoming school district. *Wyo. Stat. Ann. § 39-11-105(a)(iv); supra* ¶ 28.

66. Our evaluation of this appeal turns in part on the question of whether there was substantial evidence in the record which reasonably supports the County Board’s decision.

In determining whether the required substantial evidence is present, the State Board will not substitute its judgement for findings reasonably supported by evidence in the County Board record. *Laramie County Board of Equalization v. State Board of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyoming State Board of Equalization*, 839 P.2d 959 (Wyo. 1992); *Sage Club, Inc. v. Employment Sec. Comm'n.*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated “[s]ubstantial evidence” is a term of art best described as relevant evidence that a reasonable mind can accept as adequate to support an agency’s conclusion.” *Sidwell v. State Workers’ Compensation Division*, 977 P.2d 60, 63 (Wyo. 1999).

67. The Properties were owned by the School District at the time the Assessor reviewed the properties and on the date of assessment. Neither property had any construction upon it nor was there any apparent or obvious use. *Supra* ¶¶ 1-2, 9, 12, 20. The Properties do not fit clearly under the definition of “used primarily for a governmental purpose” found in the applicable rules and case law because both properties remained vacant at the time of assessment on January 1, 2012. *Supra* ¶¶ 42-45.

68. The Assessor determined the Properties were not exempt. Her determination was because the land was vacant, with no apparent use or the beginnings of construction. The Assessor made her determination based upon the Department’s Rules, Chapter 14 § 18(a), pertaining to “Undeveloped, Unconstructed, or Unused Property.” *Supra* ¶¶ 9-12.

69. There was no argument brought forth during the County Board Hearing by either the Assessor or the School District that either Wyoming Constitution article 15, § 12, or Wyoming Statutes section 39-11-105(a)(iv) was ambiguous. *Supra* ¶ 8. Further, nowhere in either the constitutional section or the state’s statute is a school district’s exemption limited by the property being vacant. *Supra* ¶¶ 26, 28, 47. The only requirement is the property be primarily used for a governmental purpose. The State Board will only look to the plain meaning of the words used in the constitution and the statute. *Supra* ¶¶ 34-38, 46.

70. The School District’s witness, David Bartlett, Assistant Superintendent of Operations, testified the Properties were held in land inventory by the School District only for the purpose of building schools or other school facilities. He further testified the Properties were never used for any other purpose. *Supra* ¶¶ 18, 20-21.

71. The School District must follow an onerous and complicated statutory and rule process in order to obtain land or dispose of land, as well as to construct anything upon property it owns. The Wyoming Supreme Court recognized the necessity of the statutory and rule process for school facility finance and construction. Mr. Bartlett explained the time

consuming process the School District must follow in order to obtain permission from the appropriate state agencies for construction funding or to obtain approval of building plans. He explained the process was developed by the state's legislature as part its school finance reform. Mr. Bartlett explained the detailed plans and planning process the School District undertook for the Properties when each property was considered for a school facility. The Properties were owned and being used for a governmental purpose by the School District at the time the Assessor made her inquiry of the governmental use. *Supra* ¶¶ 15-20, 36, 48-56.

72. Both Properties were considered in the School District's facility construction development plans. However, due to changes in the community's needs, neither property actually had construction started on them. Both Properties, therefore, were being held by the School District as land inventory for facility use when funding became available and upon approval of facility plans by the state school facility agencies. *Supra* ¶¶ 18, 20-21, 48-53.

73. The School District's trustees are obligated, by statute, "to acquire and hold land" for the benefit of the School District. *Supra* ¶ 54. This Board considers the acquiring and holding of land for the purpose of building school facilities is a primary governmental purpose. It is primarily a governmental use by the School District. The School District was not using the Properties for any other purpose and no evidence was introduced at the County Board hearing to the contrary. *Supra* ¶¶ 9-12, 20, 33, 54.

74. The Department's rules require the Assessor to consider the "actual and immediate use of the property consistent with the applicable exemption standard." When the County Board did so, it determined the School District, when acquiring land for school facilities, was doing so pursuant to a governmental purpose. Acquiring and holding land is consistent with the duties of school trustees authorized in Wyoming Statutes section 21-3-111(a)(ii). This complies with the Department's Rule, Chapter 14, § 4(b)(i), pertaining to the obligatory function of the school district to acquire and hold land for the purposes of school facilities. *Supra* ¶¶ 41-43, 54.

75. The parties agreed the majority of the taxes on the Properties would be returned to the state for the benefit of schools. Thus assessing and taxing the Properties is a type of tax spiral which should be avoided. *Supra* ¶¶ 5, 13, 36. *Conclusions* ¶ 59.

76. The Assessor did not provide any evidence to refute the Properties were being used for any purpose other than what the School District stated they were being used for. The Assessor interpreting the Department's Rules required the Properties to have construction upon them to qualify for an exemption. The Assessor did not consider the School District's planning and construction design in accordance with other state requirements to apply in Chapter 14 § 18(b) of the Department's Rules where "[a]n exemption may be granted once

construction or use commences consistent with the exempt purpose.” (emphasis added).
Supra ¶¶ 9-12, 17, 20, 39, 41, 43.

77. The School District Properties were presumed exempt by both Wyoming Constitution and Wyoming Statutes section 39-11-105 (a)(iv). The Properties were owned by the School District for the development of school facilities, as authorized by the Wyoming statutes. We conclude the Properties were being used primarily for the governmental purpose of the School District. *See Wyoming Rules, Department of Revenue, Chapter 14, § 18(b)*.

78. In reaching our conclusion, the Board finds the County Board decision is supported by substantial evidence, and is not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

ORDER

IT IS THEREFORE HEREBY ORDERED the decision of the Laramie County Board of Equalization to grant Taxpayer’s exemption for 2012 is **AFFIRMED**.

Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

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DATED this 9th day of June, 2014.

STATE BOARD OF EQUALIZATION


Steven D. Olmstead, Chairman


Paul Thomas Glause, Vice Chairman


E. Jayne Mockler, Board Member

ATTEST:


Jana R. Fitzgerald, Executive Assistant


CERTIFICATE OF SERVICE

I hereby certify that on the 9th day June, 2014, I served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Richard Bush
Hickey & Evans LLP
PO Box 467
Cheyenne WY 82003-0467

Kenneth Guille
Laramie County Assessor
P. O. Box 307
Cheyenne WY 82003-0307

Mark T. Voss
Laramie County Attorney
310 W 19th Street, Suite 320
Cheyenne WY 82003-4370



Jana R. Fitzgerald, Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-5206
Fax: (307) 777-6363

cc: SBOE
Dan Noble, Director, Department of Revenue
Brenda Arnold, Property Tax Division, Department of Revenue
Commission/Treasurer - Laramie County
CCH
ABA State and Local Tax Reporter
Lexis-Nexis
State Library
File